

SSB 5533 - S AMD 212

By Senator Rockefeller

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW
4 to read as follows:

5 (1) Upon the filing of a petition with the department by any water
6 right claimant alleging impairment to the claimant's right or seeking
7 to have the claimant's right determined, if the department determines
8 in its discretion that the public interest will be served thereby, the
9 department may commence a limited adjudication of water rights to
10 determine the rights of one or a limited number of the total potential
11 users of water from a source in circumstances where the issues
12 requiring determination of water do not affect every water right holder
13 in a given basin. The department may not join as a party in a limited
14 adjudication:

15 (a) A federally recognized Indian tribe or the United States or any
16 of its agencies or departments; or

17 (b) Without its consent, a city, town, or special purpose district.

18 (2) Any water right claimant may, pursuant to superior court rules,
19 move:

20 (a) To intervene in a limited adjudication of claims to such a
21 water source; or

22 (b) When joined as a party in a limited adjudication, to join
23 another party, or to dismiss the adjudication for failure to join an
24 indispensable party.

25 (3) The judgment in a limited adjudication is binding upon the
26 parties, but is not binding on any person or entity who was not a party
27 to a limited adjudication. As between the parties to the limited
28 adjudication, the judgment in a limited adjudication is admissible as
29 prima facie evidence of the existence and conditions of the right. A
30 decree in a limited adjudication may be superseded in a subsequent

1 general adjudication, but the parties to the limited adjudication may
2 not raise issues or claims that were decided in the prior proceeding.
3 As between parties to a limited adjudication, a water master may rely
4 on such a determination in dividing, regulating, and controlling the
5 use of water under RCW 90.03.070.

6 (4) Unless otherwise provided in this chapter or by court rules,
7 the procedures applicable to a general adjudication described in this
8 chapter are applicable to a limited adjudication.

9 (5) For purposes of this section, the term "water right claimant"
10 means any person who:

11 (a) Claims a right to divert or withdraw water from a water source;
12 or

13 (b) Makes a permanent transfer of a water right to the state trust
14 water program and who retains a beneficial interest in such a water
15 right.

16 (6) For purposes of this section, the state may represent its
17 interests in trust water rights, instream flows adopted by rule, or
18 other water rights that are held by the department through appointment
19 of a special independent counsel within the attorney general's office.

20 (7) Prior to filing a limited adjudication under this section the
21 department shall:

22 (a) Notify and consult with affected state agencies, local
23 governments, and Indian tribes;

24 (b) Publish notice of its intent to file a limited adjudication on
25 the same day of each week for two consecutive weeks in a legal
26 newspaper of general circulation in the area where the property that is
27 the subject of the action is located; and

28 (c) Post notice of its intent to file a limited adjudication on the
29 department's web site prior to the date of the last newspaper
30 publication that is required in (b) of this subsection.

31 **Sec. 2.** RCW 90.03.110 and 1987 c 109 s 72 are each amended to read
32 as follows:

33 (1) Except as otherwise provided in section 1 of this act, upon the
34 filing of a petition with the department by a planning unit or by one
35 or more persons claiming the right to ((divert)) any waters within the
36 state or when, after investigation, in the judgment of the department,
37 the ((interest of the public will be subserved by a determination of

1 ~~the rights thereto, it shall be the duty of the department to))~~ public
2 interest will be served by a determination of the rights thereto, the
3 department shall prepare a statement of the facts, together with a plan
4 or map of the locality under investigation, and file such statement and
5 plan or map in the superior court of the county in which said water is
6 situated, or, in case such water flows or is situated in more than one
7 county, in the county which the department shall determine to be the
8 most convenient to the parties interested therein. Such a statement
9 shall (~~contain substantially the following matter, to wit:~~

10 ~~(1) The names of all known persons claiming the right to divert~~
11 ~~said water, the right to the diversion of which is sought to be~~
12 ~~determined, and~~

13 ~~(2) A brief statement of the facts in relation to such water, and~~
14 ~~the necessity for a determination of the rights thereto)):~~

15 (a) For a limited adjudication, identify each person or entity
16 whose right to water the department seeks to determine;

17 (b) For a general adjudication, either (i) identify each person or
18 entity owning real property situated within the area to be adjudicated
19 but outside the boundaries of a city, town, or special purpose district
20 that provides water to property within its service area; (ii) identify
21 all known persons claiming a right to the water sought to be
22 determined; or (iii) identify both; and

23 (c) Include a brief statement of the facts in relation to such
24 water, and the necessity for a determination of the rights thereto.

25 (2) Prior to filing an adjudication under this chapter, the
26 department shall:

27 (a) For a limited or general adjudication, consult with the
28 administrative office of the courts to determine whether sufficient
29 judicial resources are available to commence and to prosecute the
30 adjudication in a timely manner; and

31 (b) For a general adjudication, report to the appropriate
32 committees of the legislature on the estimated budget needs for the
33 court and the department to conduct the adjudication.

34 **Sec. 3.** RCW 90.03.120 and 1987 c 109 s 73 are each amended to read
35 as follows:

36 (1) Upon the filing of the statement and map as provided in RCW
37 90.03.110 the judge of such superior court shall make an order

1 directing summons to be issued, and fixing the return day thereof,
2 which shall be not less than (~~sixty~~) one hundred nor more than
3 (~~ninety~~) one hundred thirty days, after the making of such order:
4 PROVIDED, That for good cause, the court, at the request of the
5 department, may modify said time period.

6 (2) A summons issued under this section shall (~~thereupon~~) be
7 issued out of said superior court, signed and attested by the clerk
8 thereof, in the name of the state of Washington, as plaintiff, against
9 all known persons (~~claiming the right to divert the water involved and~~
10 ~~also all persons unknown claiming the right to divert the water~~
11 ~~involved, which said~~) identified by the department under RCW
12 90.03.110. The summons shall contain a brief statement of the objects
13 and purpose of the proceedings and shall require the defendants to
14 appear on the return day thereof, and make and file (~~a statement of~~)
15 an adjudication claim to, or interest in, the water involved and a
16 statement that unless they appear at the time and place fixed and
17 assert such right, judgment will be entered determining their rights
18 according to the evidence: PROVIDED, HOWEVER, That any persons
19 claiming the right to (~~the use of~~) water by virtue of a contract with
20 claimant to the right to divert the same, shall not be necessary
21 parties to the proceeding.

22 (3) To the extent consistent with court rules and subject to the
23 availability of funds provided either by direct appropriation or funded
24 by the department through the administrative office of the courts for
25 this specific adjudicative proceeding, the court is encouraged to
26 conduct the water rights adjudication employing innovative practices
27 and technologies appropriate to large scale and complex cases, such as:
28 (a) Electronic filing of documents, including notice and claims; (b)
29 appearance via teleconferencing; (c) prefiling of testimony; and (d)
30 other practices and technologies consistent with court rules and
31 emerging technologies.

32 NEW SECTION. Sec. 4. A new section is added to chapter 90.03 RCW
33 to read as follows:

34 (1) A judge in a limited or general water right adjudication filed
35 under this chapter may be partially or fully disqualified from hearing
36 the adjudication. Partial disqualification means disqualification from

1 hearing specified claims. Full disqualification means disqualification
2 from hearing any aspect of the adjudication.

3 (a) A judge is partially disqualified when the judge's impartiality
4 might reasonably be questioned and the apparent or actual partiality is
5 limited to specified claims.

6 (b) A judge is fully disqualified when the judge's impartiality
7 might reasonably be questioned and the apparent or actual partiality
8 extends beyond limited claims such that the judge should not hear any
9 part of the adjudication.

10 (2) A judge may recuse himself or herself under this section or a
11 party may file a motion for disqualification. A motion for
12 disqualification must state whether the remedy being sought is full or
13 partial disqualification.

14 (3)(a) For parties who are named in the original pleadings, a
15 motion for disqualification is timely if it is filed before the judge
16 issues a discretionary order or ruling in the limited or general
17 adjudication.

18 (b) For a party who is joined in the adjudication after the
19 original pleadings have been filed, a motion for disqualification is
20 timely if it is filed within the earliest of either (i) thirty days of
21 being joined in the adjudication; or (ii) after the joinder of the
22 party, before the judge issues a discretionary order or ruling relating
23 to the joined party.

24 (c) When a motion for disqualification is untimely filed under this
25 subsection (3), the motion will be granted only when necessary to
26 correct a substantial injustice.

27 (d) For purposes of this section, "discretionary order or ruling"
28 has the same meaning as "order or ruling involving discretion" in RCW
29 4.12.050.

30 (4) A party filing a motion for disqualification under this section
31 has the burden of proving by a preponderance of the evidence that the
32 judge should be disqualified under the standards of subsection (1) of
33 this section.

34 (5) The motion for disqualification may not be heard by the judge
35 against whom the motion is filed. Subject to this limitation, the
36 court may assign the disqualification motion to any superior court
37 judge of the judicial district in which the limited or general

1 adjudication was filed or to a visiting superior court judge under RCW
2 2.56.040.

3 (6) Except as stated in subsection (3)(d) of this section, RCW
4 4.12.040 and 4.12.050, which otherwise govern the disqualification of
5 superior court judges, do not apply to limited or general water right
6 adjudications filed under this chapter. The standards set forth in RCW
7 2.28.030, which govern the disqualification of judicial officers
8 generally, may be grounds for disqualification under this section.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.03 RCW
10 to read as follows:

11 Upon expiration of the filing period established under RCW
12 90.03.120(2), the department shall file a motion for default against
13 defendants who have been served but who have failed to file an
14 adjudication claim under RCW 90.03.140. A party in default may file a
15 late claim under the same circumstances the party could respond or
16 defend under court rules on default judgments.

17 NEW SECTION. **Sec. 6.** A new section is added to chapter 90.03 RCW
18 to read as follows:

19 If an adjudication claim is for a use for which a statement of
20 claim was required to be filed under chapter 90.14 RCW and no such
21 claim was filed, the department may move that the adjudication claim be
22 denied. The court shall grant the department's motion unless the
23 claimant shows good cause why the motion should not be granted.

24 **Sec. 7.** RCW 90.03.130 and 1987 c 109 s 74 are each amended to read
25 as follows:

26 Service of said summons shall be made in the same manner and with
27 the same force and effect as service of summons in civil actions
28 commenced in the superior courts of the state: PROVIDED, That ((~~for~~
29 ~~good cause, the court, at the request of the department, as an~~
30 ~~alternative to personal service, may authorize service of summons to~~
31 ~~be~~) as an alternative to personal service, service may be made by
32 certified mail, with return receipt signed and dated by defendant, a
33 spouse of a defendant, or another person authorized to accept service.
34 If the defendants, or either of them, cannot be found within the state
35 of Washington, of which the return of the sheriff of the county in

1 which the proceeding is pending or the failure to sign a receipt for
2 certified mail shall be prima facie evidence, upon the filing of an
3 affidavit by the department, or its attorney, in conformity with the
4 statute relative to the service of summons by publication in civil
5 actions, such service may be made by publication in a newspaper of
6 general circulation in the county in which such proceeding is pending,
7 and also publication of said summons in a newspaper of general
8 circulation in each county in which any portion of the water is
9 situated, once a week for six consecutive weeks (six publications).
10 (~~(In cases where personal service can be had, such summons shall be~~
11 ~~served at least twenty days before the return day thereof.)~~) The
12 summons by publication shall state that (~~(statements of)~~) adjudication
13 claims must be filed within (~~(twenty)~~) sixty days after the last
14 publication or before the return date, whichever is later. In cases
15 where personal service or service by certified mail is had, summons
16 must be served at least sixty days before the return day thereof. For
17 summons by certified mail, completion of service occurs upon the date
18 of receipt by the defendant.

19 Personal service of summons may be made by department of ecology
20 employees for actions pertaining to water rights.

21 **Sec. 8.** RCW 90.03.140 and 1987 c 109 s 75 are each amended to read
22 as follows:

23 (1) On or before the (~~(return day of such summons, each defendant~~
24 ~~shall file in the office of the clerk of said court a statement, and~~
25 ~~therewith a copy thereof for the department, containing substantially~~
26 ~~the following:~~

27 ~~(1) The name and post office address of defendant.~~

28 ~~(2) The full nature of the right, or use, on which the claim is~~
29 ~~based.~~

30 ~~(3) The time of initiation of such right and commencement of such~~
31 ~~use.~~

32 ~~(4) The date of beginning and completion of construction.~~

33 ~~(5) The dimensions and capacity of all ditches existing at the time~~
34 ~~of making said statement.~~

35 ~~(6) The amount of land under irrigation and the maximum quantity of~~
36 ~~water used thereon prior to the date of said statement and if for~~

1 ~~power, or other purposes, the maximum quantity of water used prior to~~
2 ~~date of said statement.~~

3 ~~(7) The legal description of the land upon which said water has~~
4 ~~been, or may be, put to beneficial use, and the legal description of~~
5 ~~the subdivision of land on which the point of diversion is located.~~

6 ~~Such statement)) date specified in the summons, each defendant~~
7 ~~shall file with the clerk of the superior court an adjudication claim~~
8 ~~on a form and in a manner provided by the department, and mail or~~
9 ~~electronically mail a copy to the department. The department shall~~
10 ~~provide information that will assist claimants of small uses of water~~
11 ~~in completing their adjudication claims. The adjudication claim must~~
12 ~~contain substantially the following, except that when the legal basis~~
13 ~~for the claimed right is a federally reserved right, the information~~
14 ~~must be filed only as applicable:~~

15 ~~(a) The name, mailing address, and telephone contact number of each~~
16 ~~defendant on the claim, and e-mail address, if available;~~

17 ~~(b) The purpose or purposes of use of the water and the annual and~~
18 ~~instantaneous quantities of water put to beneficial use;~~

19 ~~(c) For each use, the date the first steps were taken under the law~~
20 ~~to put the water to beneficial use;~~

21 ~~(d) The date of beginning and completion of the construction of~~
22 ~~wells, ditches, or other works to put the water to use;~~

23 ~~(e) The maximum amount of land ever under irrigation and the~~
24 ~~maximum annual and instantaneous quantities of water ever used thereon~~
25 ~~prior to the date of the statement and if for power, or other purposes,~~
26 ~~the maximum annual and instantaneous quantities of water ever used~~
27 ~~prior to the date of the adjudication claim;~~

28 ~~(f) The dates between which water is used annually;~~

29 ~~(g) If located outside the boundaries of a city, town, or special~~
30 ~~purpose district that provides water to property within its service~~
31 ~~area, the legal description and county tax parcel number of the land~~
32 ~~upon which the water as presently claimed has been, or may be, put to~~
33 ~~beneficial use;~~

34 ~~(h) The legal description and county tax parcel number of the~~
35 ~~subdivision of land on which the point of diversion or withdrawal is~~
36 ~~located as well as land survey and geographic positioning coordinates~~
37 ~~of the same if available;~~

1 (i) Whether a right to surface or groundwater, or both, is claimed
2 and the source of the surface water and the location and depth of all
3 wells;

4 (j) The legal basis for the claimed right;

5 (k) Whether a statement of claim relating to the water right was
6 filed under chapter 90.14 RCW or whether a declaration relating to the
7 water right was filed under chapter 90.44 RCW and, if so, the claim or
8 declaration number, and whether the right is documented by a permit or
9 certificate and, if so, the permit number or certificate number. When
10 the source is a well, the well log number must be provided, when
11 available;

12 (1) The amount of land and the annual and instantaneous quantities
13 of water used thereon, or used for power or other purposes, that the
14 defendant claims as a present right.

15 (2) The adjudication claim shall be verified on oath by the
16 defendant (, and in the discretion of the court may be amended)). The
17 department shall furnish the form for the adjudication claim. A
18 claimant may file an adjudication claim electronically if authorized
19 under state and local court rules. The department may assist claimants
20 in their effort by making the department's pertinent records and
21 information accessible electronically or by other means and through
22 conferring with claimants.

23 NEW SECTION. Sec. 9. A new section is added to chapter 90.03 RCW
24 to read as follows:

25 Within the date set by the court for filing evidence, each claimant
26 shall file with the court evidence to support the claimant's
27 adjudication claims. The court is encouraged to set a date for filing
28 evidence that is reasonable and fair for the timely processing of the
29 adjudication. The evidence may include, without limitation, permits or
30 certificates of water right, statements of claim made under chapter
31 90.14 RCW, deeds, documents related to issuance of a land patent,
32 aerial photographs, decrees of previous water rights adjudications,
33 crop records, records of livestock purchases and sales, records of
34 power use, metering records, declarations containing testimonial
35 evidence, records of diversion, withdrawal or storage and delivery by
36 irrigation districts or ditch companies, and any other evidence to
37 support that a water right was obtained and was not thereafter

1 abandoned or relinquished. The evidence filed may include matters that
2 are outside the original adjudication claim filed, and within the date
3 set by the court for filing evidence, the claimant may amend the
4 adjudication claim to conform to the evidence filed. Thereafter,
5 except for good cause shown, a claimant may not file additional
6 evidence to support the claim.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 90.03 RCW
8 to read as follows:

9 (1) Upon the receipt of adjudication claims and the filing of
10 claimants' evidence, the department shall conduct a preliminary
11 investigation for the purpose of examining:

12 (a) The uses of the subject waters by and any physical works in
13 connection with the persons to whom the general or limited adjudication
14 applies; and

15 (b) The uses for which a statement of claim has been filed under
16 chapter 90.14 RCW or for which the department has a permit or
17 certificate of water right on record.

18 (2)(a) The examination may include, as the department deems
19 appropriate:

20 (i) An estimation of the amount of water that is reasonably
21 necessary to accomplish various beneficial uses within the area;

22 (ii) The measurement of stream flows;

23 (iii) The measurement of any diversion or withdrawal rates;

24 (iv) An estimation of storage capacity and the amount of water
25 stored;

26 (v) The types and numbers of stock watered;

27 (vi) The number of residences served;

28 (vii) The location and size of any irrigated land areas; and

29 (viii) Any other information pertinent to the determination of
30 water rights in an adjudication under this chapter.

31 (b) The department may also take other necessary steps and gather
32 other data and information as may be essential to the proper
33 understanding of the water uses and associated rights of the affected
34 water users, including review of each claimant's adjudication claim and
35 evidence the claimant filed to support the claim. The claimants and
36 the department are encouraged to confer as may be beneficial to clarify
37 the factual and legal basis for the claim. To the extent consistent

1 with court rules, the court may deem it appropriate to encourage
2 claimants and the department to work closely together to reach
3 agreement on a claimed water right that may result in timely settlement
4 of water rights, reduced costs for the parties, greater equity and
5 general public service, and better information that may be used for
6 overall water management.

7 (3) The department shall file with the court the department's
8 report of findings as to each adjudication claim filed timely under RCW
9 90.03.140. The department may divide its report of findings into two
10 or more segments, covering particular drainages, uses, or other
11 appropriate bases for dividing the report on adjudication claims.
12 Based on the evidence filed by claimants and the department's report of
13 findings, the department shall file with the superior court either or
14 both of the following motions:

15 (a) A motion for a partial decree in favor of all stated claims
16 under RCW 90.03.140 that the department finds to be substantiated with
17 factual evidence; or

18 (b) A motion seeking determination of contested claims before the
19 court.

20 **Sec. 11.** RCW 90.03.160 and 1989 c 80 s 1 are each amended to read
21 as follows:

22 (1) Upon ((the completion of the service of summons as hereinbefore
23 provided, the superior court in which said proceeding is pending shall
24 make an order referring said proceeding to the department to take
25 testimony by its duly authorized designee, as referee, and the designee
26 shall report to and file with the superior court of the county in which
27 such cause is pending a transcript of such testimony for adjudication
28 thereon by such court. The superior court may, in any complex case
29 with more than one thousand named defendants, including the United
30 States, retain for hearing and further processing such portions of the
31 proceeding as pertain to a discrete class or classes of defendants or
32 claims of water rights if the court determines that: (1) Resolution of
33 claims of such classes appear to involve significant issues of law,
34 either procedural or substantive; and (2) such a retention will both
35 expedite the conclusion of the case and reduce the overall expenditures
36 of the plaintiff, defendants, and the court)) filing of the
37 department's motion or motions under section 10(3) of this act, any

1 party with a claim filed under RCW 90.03.140 for the appropriation of
2 water or waters of the subject adjudication may file and serve a
3 response to the department's motion or motions within the time set by
4 the court for such a response. Objections must include specific
5 information in regard to the particular disposition against which the
6 objection is being made. Objections must also state the underlying
7 basis of the objection being made, including general information about
8 the forms of evidence that support the objection. Any party may file
9 testimony with the court and serve it on other parties. If a party
10 intends to cross-examine a claimant or witness based on another party's
11 prefiled testimony, the party intending to cross-examine shall file a
12 notice of intent to cross-examine no later than fifteen days in advance
13 of the hearing. If no notice of intent to cross-examine based on the
14 prefiled testimony is given, then the claimant or witness is not
15 required to appear at the hearing. Any party may present evidence in
16 support of or in response to an objection.

17 (2) The superior court may appoint a referee or other judicial
18 officer to assist the court.

19 (3) The superior court may adopt special rules of procedure for an
20 adjudication of water rights under this chapter, including simplified
21 procedures for claimants of small uses of water. The rules of
22 procedure for a superior court apply to an adjudication of water rights
23 under this chapter unless superseded by special rules of the court
24 under this subsection. The superior court is encouraged to consider
25 entering, after notice and hearing and as the court determines
26 appropriate, pretrial orders from an adjudication commenced on October
27 12, 1977.

28 NEW SECTION. Sec. 12. A new section is added to chapter 90.03 RCW
29 to read as follows:

30 (1) The legislature finds that early settlement of contested claims
31 is needed for a fair and efficient adjudication of water rights.
32 Therefore, the department and other parties should identify
33 opportunities for settlement following the date set by the court for
34 filing evidence for all parties. To the extent consistent with court
35 rules, the court as it deems beneficial is encouraged to urge as many
36 parties to the adjudication as possible to reach timely agreement on
37 claimed water rights in a manner that limits costs to the public,

1 claimants, counties, courts, and the department. Further, at
2 appropriate times throughout the process the court as it deems
3 beneficial is encouraged to direct parties to utilize alternative
4 methods of dispute resolution, including informal meetings,
5 negotiation, mediation, or other methods to reach agreement on disputed
6 claims.

7 (2) Any time after the filing of all claims under RCW 90.03.140,
8 the department or another party may move the superior court to allow
9 parties to meet for settlement discussions for a set length of time,
10 either before an appointed mediator or without a mediator. For good
11 cause shown, the court may extend the length of time for settlement
12 discussions. The costs of mediation must be equitably borne by the
13 parties to the mediation.

14 (3) If the department and a claimant reach agreement on settlement,
15 the department shall file a motion to approve the settlement pursuant
16 to section 10(3)(a) of this act and shall disclose the terms of the
17 settlement to other parties to the adjudication. The court shall
18 conduct a hearing prior to approving a settlement and any party to the
19 adjudication may object or offer modifications to the settlement.

20 **Sec. 13.** RCW 90.03.180 and 1995 c 292 s 21 are each amended to
21 read as follows:

22 At the time of filing the (~~statement~~) adjudication claim as
23 provided in RCW 90.03.140, each defendant, except the United States or
24 an Indian tribe under 43 U.S.C. Sec. 666, shall pay to the clerk of the
25 superior court a fee as set under RCW (~~36.18.020~~) 36.18.016.

26 **Sec. 14.** RCW 90.03.200 and 1988 c 202 s 91 are each amended to
27 read as follows:

28 (1) Upon the (~~filing of the evidence and the report of the~~
29 department, any interested party may, on or before five days prior to
30 the date of said hearing, file exceptions to such report in writing and
31 such exception shall set forth the grounds therefor and a copy thereof
32 shall be served personally or by registered mail upon all parties who
33 have appeared in the proceeding. If no exceptions be filed, the court
34 shall enter a decree determining the rights of the parties according to
35 the evidence and the report of the department, whether such parties
36 have appeared therein or not. If exceptions are filed the action shall

1 ~~proceed as in case of reference of a suit in equity and the court may~~
2 ~~in its discretion take further evidence or, if necessary, remand the~~
3 ~~case for such further evidence to be taken by the department's~~
4 ~~designee, and may require further report by him. Costs, not including~~
5 ~~taxable attorneys fees, may be allowed or not; if allowed, may be~~
6 ~~apportioned among the parties in the discretion of the court)) court's~~
7 determination of all issues, the court shall issue a final decree and
8 provide notice of the decree to all parties. The final decree must
9 order each party whose rights have been confirmed, except the United
10 States or an Indian tribe under 43 U.S.C. Sec. 666, to pay the
11 department the fees required by RCW 90.03.470(10) and any other
12 applicable fee schedule within ninety days after the department sends
13 notice to the party under RCW 90.03.240. Appellate review of the
14 decree shall be in the same manner as in other cases in equity, except
15 that review must be sought within sixty days from the entry thereof.

16 (2) In addition to the authority and powers to administer a final
17 decree in an adjudication otherwise held by the department, a federally
18 recognized Indian tribe, the United States or any of its agencies or
19 departments, any party, including the department, a federally
20 recognized Indian tribe, or the United States or any of its agencies or
21 departments, may bring a motion to show cause to administer the decree
22 in a court that has entered a final decree in an adjudication and has
23 retained continuing jurisdiction to administer the decree under 43
24 U.S.C. Sec. 666.

25 **Sec. 15.** RCW 90.03.210 and 2001 c 220 s 5 are each amended to read
26 as follows:

27 (1) During the pendency of such adjudication proceedings prior to
28 judgment or upon review by an appellate court, the stream or other
29 water involved shall be regulated or partially regulated according to
30 the schedule of rights specified in the department's report upon an
31 order of the court authorizing such regulation: PROVIDED, Any
32 interested party may file a bond and obtain an order staying the
33 regulation of said stream as to him, in which case the court shall make
34 such order regarding the regulation of the stream or other water as he
35 may deem just. The bond shall be filed within five days following the
36 service of notice of appeal in an amount to be fixed by the court and

1 with sureties satisfactory to the court, conditioned to perform the
2 judgment of the court.

3 (2) Any appeal of a decision of the department on an application to
4 change or transfer a water right subject to (~~(a-general)~~) an
5 adjudication that is being litigated actively (~~(and-was-commenced~~
6 ~~before-October-13,1977,)~~) shall be conducted as follows:

7 (a) The appeal shall be filed with the court conducting the
8 adjudication and served under RCW 34.05.542(3). The content of the
9 notice of appeal shall conform to RCW 34.05.546. Standing to appeal
10 shall be based on the requirements of RCW 34.05.530 and is not limited
11 to parties to the adjudication.

12 (b) If the appeal includes a challenge to the portion of the
13 department's decision that pertains to tentative determinations of the
14 validity and extent of the water right, review of those tentative
15 determinations shall be conducted by the court consistent with the
16 provisions of RCW 34.05.510 through 34.05.598, except that the review
17 shall be de novo.

18 (c) If the appeal includes a challenge to any portion of the
19 department's decision other than the tentative determinations of the
20 validity and extent of the right, the court must certify to the
21 pollution control hearings board for review and decision those portions
22 of the department's decision. Review by the pollution control hearings
23 board shall be conducted consistent with chapter 43.21B RCW and the
24 board's implementing regulations, except that the requirements for
25 filing, service, and content of the notice of appeal shall be governed
26 by (a) of this subsection. Any party to an appeal may move the court
27 to certify portions of the appeal to the pollution control hearings
28 board, but the appellant must file a motion for certification no later
29 than ninety days after the appeal is filed under this section.

30 (d) Appeals shall be scheduled to afford all parties full
31 opportunity to participate before the superior court and the pollution
32 control hearings board.

33 (e) Any person wishing to appeal the decision of the board made
34 under (c) of this subsection shall seek review of the decision in
35 accordance with chapter 34.05 RCW, except that the petition for review
36 must be filed with the superior court conducting the adjudication.

37 (3) Nothing in this section shall be construed to affect or modify
38 any treaty or other federal rights of an Indian tribe, or the rights of

1 any federal agency or other person or entity arising under federal law.
2 Nothing in this section is intended or shall be construed as affecting
3 or modifying any existing right of a federally recognized Indian tribe
4 to protect from impairment its federally reserved water rights in
5 federal court.

6 **Sec. 16.** RCW 90.03.240 and 1987 c 109 s 82 are each amended to
7 read as follows:

8 Upon the court's final determination of the rights to ~~((the~~
9 ~~diversion of))~~ water ~~((it shall be the duty of))~~, the department ~~((to))~~
10 shall issue to each person entitled to ~~((the diversion of))~~ a water
11 right by such a determination, a certificate ~~((under his official~~
12 ~~seal))~~ of adjudicated water right, setting forth the name and ~~((post~~
13 ~~office))~~ mailing address of record with the court of such person; the
14 priority and purpose of the right; the period during which said right
15 may be exercised, the point of diversion or withdrawal, and the place
16 of use; the land to which said water right is appurtenant ~~((and when~~
17 ~~applicable))~~; the maximum ~~((quantity))~~ annual and instantaneous
18 quantities of water allowed; and specific provisions or limitations or
19 both under which the water right has been confirmed.

20 The department shall provide notice to the water right holder that
21 the certificate has been prepared for issuance and that fees for the
22 issuance of the certificate are due in accordance with RCW 90.03.470
23 and any other applicable fee schedule. If the water right holder fails
24 to submit the required fees within one year from the date the notice
25 was issued by the department, the department may move the court for
26 sanctions for violation of the court's order in the final decree
27 requiring payment.

28 **Sec. 17.** RCW 90.03.243 and 1982 c 15 s 1 are each amended to read
29 as follows:

30 The expenses incurred by the state in a proceeding to determine
31 rights to water initiated under RCW 90.03.110 or 90.44.220 or upon
32 appeal of such a determination shall be borne by the state. Subject to
33 the availability of state funding provided either by direct
34 appropriation or funded through the administrative office of the courts
35 for this specific purpose, the county in which an adjudication or a

1 suit to administer an adjudication is being held must be provided the
2 extraordinary costs imposed on the superior court of that county due to
3 the adjudication.

4 **Sec. 18.** RCW 90.44.220 and 1987 c 109 s 119 are each amended to
5 read as follows:

6 ~~((In its discretion or upon the application of any party claiming~~
7 ~~right to the withdrawal and use of public groundwater, the department~~
8 ~~may file a petition)) Except as otherwise provided in section 1 of this
9 act, upon the filing of a petition with the department by a planning
10 unit or by one or more persons claiming a right to any waters within
11 the state or when, after investigation, in the judgment of the
12 department, the public interest will be served by a determination of
13 the rights thereto, the department shall file a petition to conduct a
14 limited or general adjudication with the superior court of the county
15 for the determination of the rights of appropriators of any particular
16 groundwater body and all the provisions of RCW 90.03.110 through
17 90.03.240 ~~((as heretofore amended))~~ and sections 1, 4 through 6, 9, 10,
18 and 12 of this act, shall govern and apply to the adjudication and
19 determination of such groundwater body and to the ownership thereof.
20 Hereafter, in any proceedings for the limited or general adjudication
21 and determination of water rights--either rights to the use of surface
22 water or to the use of groundwater, or both--pursuant to chapter 90.03
23 RCW ~~((as heretofore amended))~~, all or part of the appropriators of
24 groundwater or of surface water in the particular basin or area may be
25 included as parties to such adjudication, as ~~((pertinent))~~ set forth in
26 chapter 90.03 RCW.~~

27 **Sec. 19.** RCW 34.05.514 and 2008 c 128 s 16 are each amended to
28 read as follows:

29 (1) Except as provided in subsections (2) through (4) of this
30 section, proceedings for review under this chapter shall be instituted
31 by paying the fee required under RCW 36.18.020 and filing a petition in
32 the superior court, at the petitioner's option, for (a) Thurston
33 county, (b) the county of the petitioner's residence or principal place
34 of business, or (c) in any county where the property owned by the
35 petitioner and affected by the contested decision is located.

1 (2) For proceedings involving institutions of higher education, the
2 petition shall be filed either in the county in which the principal
3 office of the institution involved is located or in the county of a
4 branch campus if the action involves such branch.

5 (3) For proceedings conducted by the pollution control hearings
6 board pursuant to chapter 43.21B RCW or as otherwise provided in RCW
7 90.03.210(2) involving decisions of the department of ecology on
8 applications for changes or transfers of water rights that are the
9 subject of a general adjudication of water rights that is being
10 litigated actively under chapter 90.03 or 90.44 RCW, the petition must
11 be filed with the superior court conducting the adjudication, to be
12 consolidated by the court with the general adjudication. A party to
13 the adjudication shall be a party to the appeal under this chapter only
14 if the party files or is served with a petition for review to the
15 extent required by this chapter.

16 (4) For proceedings involving appeals of examinations or evaluation
17 exercises of the board of pilotage commissioners under chapter 88.16
18 RCW, the petition must be filed either in Thurston county or in the
19 county in which the board maintains its principal office.

20 (5) For proceedings conducted by the pollution control hearings
21 board pursuant to chapter 43.21B RCW involving an order pursuant to RCW
22 90.14.130 of relinquishment of water rights that have been confirmed in
23 a decree entered after July 1, 2009, adjudicating water rights, or
24 involving decisions of the department of ecology to regulate, change,
25 transfer, or otherwise administer uses of water for which rights were
26 determined in such a decree, the petition must be filed in the county
27 in which the decree was entered.

28 **Sec. 20.** RCW 43.21B.110 and 2003 c 393 s 19 are each amended to
29 read as follows:

30 (1) The hearings board shall only have jurisdiction to hear and
31 decide appeals from the following decisions of the department, the
32 director, local conservation districts, and the air pollution control
33 boards or authorities as established pursuant to chapter 70.94 RCW, or
34 local health departments:

35 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
36 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and
37 90.56.330.

1 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
2 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
3 90.14.130, 90.48.120, and 90.56.330.

4 (c) Except as provided in RCW 90.03.210(2), the issuance,
5 modification, or termination of any permit, certificate, or license by
6 the department or any air authority in the exercise of its
7 jurisdiction, including the issuance or termination of a waste disposal
8 permit, the denial of an application for a waste disposal permit, the
9 modification of the conditions or the terms of a waste disposal permit,
10 or a decision to approve or deny an application for a solid waste
11 permit exemption under RCW 70.95.300.

12 (d) Decisions of local health departments regarding the grant or
13 denial of solid waste permits pursuant to chapter 70.95 RCW.

14 (e) Decisions of local health departments regarding the issuance
15 and enforcement of permits to use or dispose of biosolids under RCW
16 70.95J.080.

17 (f) Decisions of the department regarding waste-derived fertilizer
18 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
19 department regarding waste-derived soil amendments under RCW 70.95.205.

20 (g) Decisions of local conservation districts related to the denial
21 of approval or denial of certification of a dairy nutrient management
22 plan; conditions contained in a plan; application of any dairy nutrient
23 management practices, standards, methods, and technologies to a
24 particular dairy farm; and failure to adhere to the plan review and
25 approval timelines in RCW 90.64.026.

26 (h) Any other decision by the department or an air authority which
27 pursuant to law must be decided as an adjudicative proceeding under
28 chapter 34.05 RCW.

29 (2) The following hearings shall not be conducted by the hearings
30 board:

31 (a) Hearings required by law to be conducted by the shorelines
32 hearings board pursuant to chapter 90.58 RCW.

33 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
34 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

35 ~~((Proceedings conducted by the department, or the department's~~
36 ~~designee, under RCW 90.03.160 through 90.03.210 or 90.44.220.)) Appeals~~
37 of decisions by the department under RCW 90.03.110, 90.44.220, and
38 section 1 of this act.

1 (d) Hearings conducted by the department to adopt, modify, or
2 repeal rules.

3 (e) Appeals of decisions by the department as provided in chapter
4 43.21L RCW.

5 (3) Review of rules and regulations adopted by the hearings board
6 shall be subject to review in accordance with the provisions of the
7 Administrative Procedure Act, chapter 34.05 RCW.

8 NEW SECTION. **Sec. 21.** Except as provided in RCW 43.21B.110, this
9 act applies only to adjudications initiated after the effective date of
10 this section.

11 NEW SECTION. **Sec. 22.** The following acts or parts of acts are
12 each repealed:

13 (1) RCW 90.03.170 (Determination of water rights--Hearing--Notice--
14 Prior rights preserved) and 1987 c 109 s 77 & 1917 c 117 s 20; and

15 (2) RCW 90.03.190 (Determination of water rights--Transcript of
16 testimony--Filing--Notice of hearing) and 1987 c 109 s 78 & 1917 c 117
17 s 22."

SSB 5533 - S AMD
By Senator Rockefeller

18 On page 1, line 1 of the title, after "rights;" strike the
19 remainder of the title and insert "amending RCW 90.03.110, 90.03.120,
20 90.03.130, 90.03.140, 90.03.160, 90.03.180, 90.03.200, 90.03.210,
21 90.03.240, 90.03.243, 90.44.220, 34.05.514, and 43.21B.110; adding new
22 sections to chapter 90.03 RCW; creating a new section; and repealing
23 RCW 90.03.170 and 90.03.190."

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